

Order

**Michigan Supreme Court
Lansing, Michigan**

March 21, 2007

Clifford W. Taylor,
Chief Justice

ADM File No. 2006-28

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendments
of Rules 5.207, 5.302,
5.307, and 5.409 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amending Rules 5.207, 5.302, 5.307, and 5.409 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted on the Court's website at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language would be amended as indicated below
by strikeouts and underlining.]

Rule 5.207 Sale of Real Estate

- (A) Petition. Any petition to approve the sale of real estate must contain the following:
- (1) the terms and purpose of the sale,
 - (2) the legal description of the property,
 - (3) the financial condition of the estate before the sale, and
 - (4) an appended copy of the most recent assessor statement or tax statement showing the state equalized value of the property. If the court is not satisfied that the evidence provides the fair market value, a written appraisal may be ordered.

(B) [Unchanged.]

Rule 5.302 Commencement of Decedent Estates

(A) **Methods of Commencement.** A decedent estate may be commenced by filing an application for an informal proceeding or a petition for a formal testacy proceeding. A request for supervised administration may be made in a petition for a formal testacy proceeding. When filing either an application or petition to commence a decedent estate, a copy of the death certificate must be attached. If the decedent's domicile as reflected on the death certificate is different than the domicile alleged on the application or petition, the applicant or petitioner must either file an amended death certificate or file a petition to determine domicile with a petition for a formal testacy proceeding and set the matter for hearing with the court. If the death certificate is not available, the petitioner may provide alternative documentation of the decedent's death. Requiring additional documentation, such as information about the proposed or appointed personal representative, is prohibited.

(B)-(D)[Unchanged.]

Rule 5.307 Requirements Applicable to All Decedent Estates

(A) [Unchanged.]

(B) **Notice to Personal Representative.** At the time of appointment, the court must provide the personal representative with written notice of information to be provided to the court. The notice should be substantially in the following form or in the form specified by MCR 5.310(E), if applicable:

“Inventory Information: Within 91 days of the date of the letters of authority, you must submit to the court the information necessary for computation of the probate inventory fee. You must also provide the name and address for each financial institution listed on your inventory at the time the inventory is presented to the court.

“Change of Address: You must keep the court and all interested persons informed in writing within 7 days of any change in your address.

“Notice of Continued Administration: If you are unable to complete the administration of the estate within one year of the original personal representative’s appointment, you must file with the court and all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of the administration. You must give this notice within 28 days of the first anniversary of the original appointment and all subsequent anniversaries during which the administration remains uncompleted.

“Duty to Complete Administration of Estate: You must complete the administration of the estate and file appropriate closing papers with the court. Failure to do so may result in personal assessment of costs.”

(C)-(D) [Unchanged.]

Alternative A:

Rule 5.409 Report of Guardian; Inventories and Accounts of Conservators

(A) [No change.]

(B) Inventories.

(1) [No change.]

(2) Filing and Service. Within 56 days after appointment, a conservator or, if ordered to do so, a guardian shall file with the court a verified inventory of the estate of the protected person, serve copies on the persons required by law or court rule to be served, and file proof of service with the court. ~~Property the protected person owns jointly or in common with others must be listed on the inventory along with the type of ownership.~~

(3) Contents. The guardian or conservator must provide the name and address of each financial institution listed on the inventory. Property that the protected individual owns jointly or in common with others must be listed on the inventory along with the type of ownership and value.

(C) Accounts.

(1) Filing, Service. A conservator must file an annual account unless ordered not to by the court. A guardian must file an annual account if ordered by the court. The provisions of the court rules apply to any account that is filed with the court even if the account was not required by court order. The account must be served on interested persons, and proof of service must be filed with the court. The copy of the account served on interested persons must include a notice that any objections to the account should be filed with the court and noticed for hearing. When required, an accounting must be filed within 56 days after the end of the accounting period.

(2)-(3) [Unchanged.]

(4) Exception, Conservatorship of Minor. Unless otherwise ordered by the court, no accounting is required in a minor conservatorship where the assets are restricted or in a conservatorship where no assets have been received by the conservator. If the assets are ordered to be placed in a restricted account, proof of the restricted account must be filed with the court within ~~14~~ 28 days of the conservator's qualification or as otherwise ordered by the court. The conservator must file with the court an annual verification of funds on deposit with a copy of the corresponding financial institution statement attached.

(5) Contents. The accounting is subject to the provisions of MCR 5.310(C)(2)(c) and (d), except that references to a personal representative shall be to a conservator. An annual verification of funds on deposit reflecting all liquid assets held by a financial institution dated within 30 days after the end of the accounting period must be filed with the court to reflect the value of all liquid. ~~A copy of the corresponding financial institution statement for all liquid assets, dated within 30 days of the end of the accounting period, must be presented to the court to verify assets on hand at the end of the accounting period, unless waived by the court for good cause.~~

(6) [Unchanged.]

(D)-(F) [Unchanged.]

Alternative B:

Rule 5.409 Report of Guardian; Inventories and Accounts of Conservators

(A) [No change.]

(B) Inventories.

(1) [No change.]

(2) Filing and Service. Within 56 days after appointment, a conservator or, if ordered to do so, a guardian shall file with the court a verified inventory of the estate of the protected person, serve copies on the persons required by law or court rule to be served, and file proof of service with the court. ~~Property the protected person owns jointly or in common with others must be listed on the inventory along with the type of ownership.~~

(3) Contents. The guardian or conservator must provide the name and address of each financial institution listed on the inventory. Property that the protected individual owns jointly or in common with others must be listed on the inventory along with the type of ownership and value.

(C) Accounts.

(1) Filing, Service. A conservator must file an annual account unless ordered not to by the court. A guardian must file an annual account if ordered by the court. The provisions of the court rules apply to any account that is filed with the court even if the account was not required by court order. The account must be served on interested persons, and proof of service must be filed with the court. The copy of the account served on interested persons must include a notice that any objections to the account should be filed with the court and noticed for hearing. When required, an accounting must be filed within 56 days after the end of the accounting period.

(2)-(3) [Unchanged.]

- (4) Exception, Conservatorship of Minor. Unless otherwise ordered by the court, no accounting is required in a minor conservatorship where the assets are restricted or in a conservatorship where no assets have been received by the conservator. If the assets are ordered to be placed in a restricted account, proof of the restricted account must be filed with the court within ~~14~~ 28 days of the conservator's qualification or as otherwise ordered by the court. The conservator must file with the court an annual verification of funds on deposit with a copy of the corresponding financial institution statement attached.
 - (5) Contents. The accounting is subject to the provisions of MCR 5.310(C)(2)(c) and (d), except that references to a personal representative shall be to a conservator. Either aA copy of the corresponding financial institution statement must be presented to the court or a verification of funds on deposit must be filed with the court reflecting the value of all liquid assets held by a financial institution dated within 30 days after the ~~for all liquid assets, dated within 30 days of the end of the accounting period, must be presented to the court to verify assets on hand at the end of the accounting period, unless waived by the court for good cause.~~
 - (6) [Unchanged.]
- (D)-(F) [Unchanged.]

Staff Comment: These amendments were proposed by the Probate and Estate Planning Section of the State Bar of Michigan. They are intended to address and clarify practice issues within the amended rules. The proposed amendment of MCR 5.207(A)(4) provides the alternative to include a tax statement to show the state equalized value on property. The proposed amendment of MCR 5.302(A) clarifies the process for courts and petitioners when there is a discrepancy between the domicile of the decedent as noted on the death certificate and the petition or application for probate. The proposed amendments of MCR 5.307(B) and MCR 5.409(B)(3) require the name and address of

each financial institution be added to the inventory. The proposed amendment of MCR 5.409(C)(1) requires any account filed with the court to comply with relevant court rules. The proposed amendment of MCR 5.409(C)(4) extends the time in which to file proof of a minor's assets in a restricted account from 14 to 28 days. The proposed amendment of MCR 5.409(C)(5), in Alternative A, requires an annual verification of funds on deposit be filed with each annual account rather than a copy of the financial institution statement. The proposed amendment of MCR 5.409(C)(5), in Alternative B, allows the option of filing an annual verification of funds on deposit or presenting a copy of a financial institution statement with an annual account.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2007, at P. O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2006-28. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 21, 2007

Corbin R. Davis
Clerk